

SERVED: July 1, 1999

NTSB Order No. EA-4779

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 30th day of June, 1999

|                                  |   |                 |
|----------------------------------|---|-----------------|
| _____                            | ) |                 |
| JANE F. GARVEY,                  | ) |                 |
| Administrator,                   | ) |                 |
| Federal Aviation Administration, | ) |                 |
|                                  | ) |                 |
| Complainant,                     | ) |                 |
|                                  | ) | Docket SE-15606 |
| v.                               | ) |                 |
|                                  | ) |                 |
| JOHN RICHARD DUNN,               | ) |                 |
|                                  | ) |                 |
| Respondent.                      | ) |                 |
| _____                            | ) |                 |

**OPINION AND ORDER**

The respondent has appealed from the oral initial decision Administrative Law Judge William R. Mullins rendered in this proceeding on June 2, 1999, at the conclusion of an evidentiary hearing.<sup>1</sup> By that decision, the law judge affirmed an emergency order of the Administrator revoking respondent's mechanic certificate (No. 548061807), with airframe and powerplant ratings, for his alleged violation of section 43.12(a)(1) of the

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<sup>1</sup>An excerpt from the hearing transcript containing the initial decision is attached.

Federal Aviation Regulations, "FAR," 14 C.F.R. Part 43.<sup>2</sup> For the reasons discussed below, the appeal will be denied.<sup>3</sup>

The Administrator's Emergency Order of Revocation, dated April 20, 1999, alleges, in part, the following facts and circumstances concerning the respondent:

2. On or about March 11, 1998, you performed maintenance on civil aircraft N515LG, an Israel Aircraft Industries IA-1124, and approved said aircraft for return to service.

3. You made the following entry in the maintenance records of N515LG: "c/w 3 yr T/R cable lube."

4. At the time you made the entries referred to in paragraph 3, the aircraft maintenance manual required the lubrication of the throttle retarder feedback cable at intervals not to exceed three years.

5. Your entry in the aircraft maintenance records, as described in paragraph 3, signified that you had performed the required lubrication of the throttle retarder feedback cable.

6. That entry was fraudulent or intentionally false in that you did not lubricate the throttle retarder feedback cable.

On appeal, respondent contends that the charge against the respondent was not supported by a preponderance of the substantial, reliable, and probative evidence. We find no error in the law judge's contrary conclusion.

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<sup>2</sup>FAR section 43.12(a)(1) provides as follows:

**§ 43.12 Maintenance records: Falsification, reproduction, or alteration.**

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part....

<sup>3</sup>The Administrator has filed a reply brief opposing the

We need not review in detail the evidence introduced in support of the Administrator's single charge against the respondent, as it is adequately described in the law judge's decision. He did not credit respondent's testimony that he had performed the lubrication service noted in the aircraft's maintenance logbooks, in the face of persuasive evidence that the respondent could not have done so. The chief components of that evidence are these: (1) the throttle retarder feedback cable cannot be lubricated unless two access panels (on the nacelle of each of the aircraft's two engines) are removed; (2) the entire aircraft was painted in 1996; (3) examination of the access panels in February 1999, almost a year after respondent's logbook entry, revealed that the paint around the panels and over the screw heads securing them had not been broken or disturbed; and (4) there was no visual indication, nor logbook entry to support any conclusion, that the seams around the panels or on the screws had been repainted after a removal for maintenance. We agree with the law judge that this showing constituted sufficient circumstantial proof that respondent, contrary to his logbook entry, could not have accomplished the maintenance he signed off, and, therefore, that the violation was established.

Respondent's contentions to the effect that his testimony should have been accepted over those who testified on behalf of the Administrator amount to no more than a challenge to the law

(..continued)  
appeal.

judge's credibility assessments.<sup>4</sup> Respondent has not, however, identified any compelling basis for concluding that the law judge's credibility determinations were arbitrary, capricious or otherwise deficient in a manner which would warrant their reversal on appeal. See Administrator v. Smith, 5 NTSB 1560, 1563 (1986).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is denied; and
2. The initial decision and the Emergency Order of Revocation are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>4</sup>The law judge was fully apprised of all the factors that may have influenced the testimony of the various witnesses, including the fact that one of them worked for a company whose predecessor, sometime after respondent's maintenance on N515LG, performed a check on the aircraft during which the throttle retarder cable should have been, but was not, they voluntarily admitted, serviced.